

§ 150.401

- (b) The fee will be at the rate established by 43 CFR 2, Appendix A.
- (c) The LTRO may waive all or part of these fees, at its discretion.
- (d) Paid fees are non-refundable.

Subpart E—Records

§ 150.401 Who owns the records associated with this part?

(a) The records associated with this part are the property of the United States if they:

(1) Are made or received by the Secretary or a Tribe or Tribal organization in the conduct of a Federal trust function under 25 U.S.C. 5301 *et seq.*, including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a Federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a Tribe or Tribal organization in the conduct of business with the Department of the Interior under this part are the property of the Tribe.

§ 150.402 How must records associated with this part be preserved?

(a) Tribes, Tribal organizations, and any other organization that make or receives records described in § 150.401(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A Tribe or Tribal organization should preserve the records identified in § 150.401(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. chapter 33.

§ 150.403 How does the Paperwork Reduction Act affect this part?

The information collections contained in this part have been approved by the Office of Management and Budg-

25 CFR Ch. I (4-1-25 Edition)

et under 44 U.S.C 3301 *et seq.* and assigned OMB Control Number 1076-0196. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation containing the collection of information has a currently valid OMB Control Number.

PART 151—LAND ACQUISITIONS

Sec.

- 151.1 What is the purpose of this part?
- 151.2 How are key terms defined?
- 151.3 What is the Secretary's land acquisition policy?
- 151.4 How will the Secretary determine that statutory authority exists to acquire land in trust status?
- 151.5 May the Secretary acquire land in trust status by exchange?
- 151.6 May the Secretary approve acquisition of a fractional interest?
- 151.7 Is Tribal consent required for non-member acquisitions?
- 151.8 What documentation is included in a trust acquisition package?
- 151.9 How will the Secretary evaluate a request involving land within the boundaries of an Indian reservation?
- 151.10 How will the Secretary evaluate a request involving land contiguous to the boundaries of an Indian reservation?
- 151.11 How will the Secretary evaluate a request involving land outside of and non-contiguous to the boundaries of an Indian reservation?
- 151.12 How will the Secretary evaluate a request involving land for an initial Indian acquisition?
- 151.13 How will the Secretary act on requests?
- 151.14 How will the Secretary review title?
- 151.15 How will the Secretary conduct a review of environmental conditions?
- 151.16 How are formalization of acceptance and trust status attained?
- 151.17 What effect does this part have on pending requests and final agency decisions already issued?
- 151.18 Severability.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 403a-2, 409a, 1466, 1495, 5107, 5108, 5136, 5138, 5201, 5202, 5322, 5341; Pub. L. 71-780, 46 Stat. 1471, amended by Pub. L. 72-231, 47 Stat. 474; Pub. L. 74-816, 49 Stat. 1967, amended by Sec. 10, Pub. L. 80-336, 61 Stat. 734; Secs. 3, 4, 6, Pub. L. 76-238, 53 Stat. 1129, 1130; Sec. 7, Pub. L. 79-706, 60 Stat. 969, amended by Pub. L. 91-627, 84 Stat. 1874; Pub. L. 81-226, 63 Stat. 605; Pub. L. 84-188, 69 Stat. 392, amended by Pub. L. 88-540, 78 Stat. 747, amended by Sec. 213,

Bureau of Indian Affairs, Interior**§ 151.2**

Pub. L. 100-581, 102 Stat. 2941, amended by Sec. 1, Pub. L. 101-301, 104 Stat. 206; Pub. L. 84-592, 70 Stat. 290, amended by Pub. L. 91-274, 84 Stat. 301; Pub. L. 84-772, 70 Stat. 626; Sec. 10, Pub. L. 87-231, 75 Stat. 505; Pub. L. 88-196, 77 Stat. 349; Pub. L. 88-418, 78 Stat. 389; Pub. L. 90-335, 82 Stat. 174, amended by Pub. L. 93-286, 88 Stat. 142; Pub. L. 90-534, 82 Stat. 884; Pub. L. 92-312, 86 Stat. 216; Pub. L. 92-377, 86 Stat. 530; Pub. L. 92-443, 86 Stat. 744; Sec. 11, Pub. L. 93-531, 88 Stat. 1716, amended by Sec. 4, Pub. L. 96-305, 94 Stat. 930, amended by Sec. 106, 98-603, 98 Stat. 3157, amended by Secs. 4(b), 8, Pub. L. 100-666, 102 Stat. 3930, 3933.

SOURCE: 88 FR 86249, Dec. 12, 2023, unless otherwise noted.

§ 151.1 What is the purpose of this part?

This part sets forth the authorities, policies, and procedures governing the acquisition of land by the United States in trust status for individual Indians and Tribes. This part does not cover acquisition of land by individual Indians and Tribes in fee simple status even though such land may, by operation of law, be held in restricted status following acquisition; acquisition of land mandated by Federal law; acquisition of land in trust status by inheritance or escheat; or transfers of land into restricted fee status unless required by Federal law.

§ 151.2 How are key terms defined?

Contiguous means two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point.

Fee interest means an interest in land that is owned in unrestricted fee simple status and is, thus, freely alienable by the fee owner.

Fractionated tract means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.

Indian land means any tract in which any interest is held by a Tribe or individual Indian in trust or restricted status and includes both individually owned Indian land and Tribal land.

Indian landowner means a Tribe or individual Indian who owns an interest in Indian land.

Indian reservation or *Tribe's reservation* means, unless another definition is

required by Federal law authorizing a particular trust acquisition, that area of land over which the Tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma wherever historic reservations have not yet been reaffirmed, or where there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the Tribe as defined by the Secretary.

Individual Indian means:

(1) Any person who is an enrolled member of a Tribe;

(2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation; or

(3) Any other person possessing a total of one-half or more degree Indian blood of a Tribe.

Initial Indian acquisition means an acquisition of land in trust status for the benefit of a Tribe that currently has no land held in trust status.

Interested party means a person or other entity whose legally protected interests would be affected by a decision.

Land means real property or any interest therein.

Marketable title means title that a reasonable buyer would accept because it appears to lack substantial defect and that covers the entire property that the seller has purported to sell.

Preliminary Title Opinion means an opinion issued by the Office of the Solicitor that reviews the existing status of title, examining both record and non-record title evidence and any encumbrances or liens against the land, and sets forth requirements to be met before acquiring land in trust status.

Preliminary title report means a report prepared by a title company prior to issuing a policy of title insurance that shows the ownership of a specific parcel of land together with the liens and encumbrances thereon.

Restricted land or *land in restricted status* means land the title to which is held by an individual Indian or a Tribe

§ 151.3

25 CFR Ch. I (4-1-25 Edition)

and which can only be alienated or encumbered by the owner with the approval of the Secretary due to limitations contained in the conveyance instrument pursuant to Federal law or because a Federal law directly imposes such limitations.

Secretary means the Secretary of the Interior or authorized representative.

Tribe means any Indian Tribe listed under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130). For purposes of acquisitions made under the authority of 25 U.S.C. 5136 and 5138, or other statutory authority which specifically authorizes trust acquisitions for such corporations, *Tribe* also means a corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 5124) or section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 5203).

Trust land or *land in trust status* means land the title to which is held in trust by the United States for an individual Indian or a Tribe.

Undivided interest means a fractional share of ownership in an estate of Indian land where the estate is owned in common with other Indian landowners or fee owners.

§ 151.3 What is the Secretary's land acquisition policy?

(a) It is the Secretary's policy to acquire land in trust status through direct acquisition or transfer for individual Indians and Tribes to strengthen self-determination and sovereignty, ensure that every Tribe has protected homelands where its citizens can maintain their Tribal existence and way of life, and consolidate land ownership to strengthen Tribal governance over reservation lands and reduce checkerboarding. The Secretary retains discretion whether to acquire land in trust status where discretion is granted under Federal law. Land not held in trust or restricted status may only be acquired for an individual Indian or a Tribe in trust status when the acquisition is authorized by Federal law. No acquisition of land in trust status under these regulations, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(b) Subject to the provisions of Federal law authorizing trust land acquisitions, the Secretary may acquire land for a Tribe in trust status:

(1) When the land is located within the exterior boundaries of the Tribe's reservation or contiguous thereto;

(2) When the Tribe already owns an interest in the land; or

(3) When the Secretary determines that the acquisition of the land will further Tribal interests by establishing a Tribal land base or protecting Tribal homelands, protecting sacred sites or cultural resources and practices, establishing or maintaining conservation or environmental mitigation areas, consolidating land ownership, reducing checkerboarding, acquiring land lost through allotment, protecting treaty or subsistence rights, or facilitating Tribal self-determination, economic development, Indian housing, or for other reasons the Secretary determines will support Tribal welfare.

(c) Subject to the provisions contained in Federal law which authorize land acquisitions or holding land in trust or restricted status, the Secretary may acquire land in trust status for an individual Indian:

(1) When the land is located within the exterior boundaries of an Indian reservation, or contiguous thereto; or

(2) When the land is already in trust or restricted status.

§ 151.4 How will the Secretary determine that statutory authority exists to acquire land in trust status?

When a Tribe's application relies on the first definition of "Indian" in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5101 *et seq.*) (IRA) to establish statutory authority for the proposed acquisition, the Secretary will apply the following criteria to determine whether the Tribe was under Federal jurisdiction in 1934.

(a) In determining whether a Tribe was "under Federal jurisdiction" in 1934 within the meaning of section 19 of the IRA (48 Stat. 988; 25 U.S.C. 5129), the Secretary shall consider evidence of Federal jurisdiction in the manner provided in paragraphs (a)(1) through (5) of this section.

(1) Conclusive evidence establishes in and of itself both that a Tribe was

placed under Federal jurisdiction and that this jurisdiction remained intact in 1934. If such evidence exists, no further analysis under this section is needed. The following is conclusive evidence that a Tribe was under Federal jurisdiction in 1934:

(i) A vote under section 18 of the IRA (48 Stat. 988; 25 U.S.C. 5125) to accept or reject the IRA as recorded in *Ten Years of Tribal Government Under I.R.A.*, Theodore Haas, United States Indian Service (Jan. 1947) (Haas List) or other Federal government document;

(ii) Land held in trust by the United States for the Tribe in 1934.

(iii) Secretarial approval of a Tribal constitution under section 16 of the IRA as recorded in the Haas List or other Federal Government document;

(iv) Secretarial approval of a charter of incorporation issued to a Tribe under section 17 of the IRA as recorded in the Haas List or other Federal Government document;

(v) An Executive Order for a specific Tribe that was still in effect in 1934;

(vi) Treaties to which a Tribe is a party, ratified by the United States and still in effect as to that party in 1934;

(vii) Continuing existence in 1934 or later of treaty rights guaranteed by a treaty ratified by the United States; or

(viii) Other evidence that the Secretary determines is conclusive in a particular case.

(2) Presumptive evidence is indicative that a Tribe was placed under Federal jurisdiction in or before 1934 and may indicate that such jurisdiction remained intact in 1934. In the absence of evidence indicating that Federal jurisdiction did not exist or did not exist in 1934, presumptive evidence satisfies the analysis under this section. The following is presumptive evidence that a Tribe was under Federal jurisdiction in 1934:

(i) Evidence of treaty negotiations or evidence a Tribe signed a treaty with the United States whether or not such treaty was ratified by Congress;

(ii) Listing of a Tribe in the Department of the Interior's 1934 Indian Population Report;

(iii) Evidence that the United States took efforts to acquire lands on behalf

of a Tribe in the years leading up to the passage of the IRA;

(iv) Inclusion in Volume V of Charles J. Kappler's *Indian Affairs, Laws and Treaties*;

(v) Federal legislation for a specific Tribe, including land claim settlements and termination legislation enacted after 1934, which acknowledges the existence of a government-to-government relationship with a Tribe in or before 1934; or

(vi) Satisfaction of the criterion for Federal acknowledgment now located at 25 CFR 83.11(a) and previously located at 25 CFR 83.7(a), requiring that a Tribe "has been identified as an American Indian entity on a substantially continuous basis," through evidence that brought the Tribe under Federal jurisdiction in or before 1934; or

(vii) Other evidence that the Secretary determines is presumptive in a particular case.

(3) In the absence of evidence identified above as conclusive or presumptive evidence, the Secretary may find that a Tribe was under Federal jurisdiction in 1934 when the United States in 1934 or at some point in the Tribe's history prior to 1934, took an action or series of actions that, when viewed in concert through a course of dealings or other relevant acts on behalf of a Tribe, or in some instances Tribal members, establishes or generally reflects Federal obligations, or duties, responsibility for or authority over the Tribe, and that such jurisdictional status remained intact in 1934.

(i) Examples of Federal actions that exhibit probative evidence of Federal jurisdiction may include but are not limited to, the Department's acquisition of land for a Tribe in implementing the Indian Reorganization Act of 1934, efforts by the Federal Government to conduct a vote under section 18 of the IRA to accept or reject the IRA where no vote was held, the attendance of Tribal members at Bureau of Indian Affairs operated schools, Federal decisions regarding whether to remove or not remove a Tribe from its homelands, the inclusion of a Tribe in Federal reports and surveys, the inclusion of a Tribe or Tribal members in Federal census records prepared by the

§ 151.5

Office of Indian Affairs, the approval of contracts between a Tribe and non-Indians; enforcement of the Trade and Intercourse Acts (Indian trader, liquor laws, and land transactions), and the provision of health and social services to a Tribe or Tribal members.

(ii) [Reserved]

(4) When a Tribe is recognized under the 25 CFR part 83 process, the Secretary may rely on any evidence within the part 83 record that the Tribe was under Federal jurisdiction in or before 1934, consistent with § 151.4(a)(2) and (3).

(5) Evidence of executive officials disavowing Federal jurisdiction over a Tribe in certain instances is not conclusive evidence of a Tribe's Federal jurisdictional status. This is because such disavowals cannot themselves revoke Federal jurisdiction over a Tribe.

(b) For some Tribes, Congress enacted legislation after 1934 making the IRA applicable to the Tribe. The existence of such legislation making the IRA and its trust acquisition provisions applicable to a Tribe eliminates the need to determine whether a Tribe was under Federal jurisdiction in 1934.

(c) In order to be eligible for trust acquisitions under section 5 of the IRA, no additional "under Federal jurisdiction" analysis is required under this part for Tribes for which the Department has previously issued an analysis finding the Tribe was under Federal jurisdiction.

(d) Land may be acquired in trust status for an individual Indian or a Tribe in the State of Oklahoma under section 5 of the IRA if the acquisition comes within the terms of this part. This authority is in addition to all other statutory authority for such an acquisition.

(e) The Secretary may also acquire land in trust status for an individual Indian or a Tribe under this part when specifically authorized by Federal law other than section 5 of the IRA, subject to any limitations contained in that Federal law.

§ 151.5 May the Secretary acquire land in trust status by exchange?

The Secretary may acquire land in trust status on behalf of an individual Indian or Tribe by exchange under this

25 CFR Ch. I (4-1-25 Edition)

part if authorized by Federal law and within the terms of this part. The disposal aspects of an exchange are governed by part 152 of this title.

§ 151.6 May the Secretary approve acquisition of a fractional interest?

Where the mandatory acquisition process provided under 25 U.S.C. 2216(c) is not applicable to a fractional interest acquisition, *e.g.*, where the acquisition proposed is off-reservation, the following section applies to discretionary acquisitions of fractional interests. The Secretary may approve the acquisition of a fractional interest in a fractionated tract in trust status by an individual Indian or a Tribe including when:

(a) The applicant already owns a fractional interest in the same parcel of land;

(b) The interest being acquired by the applicant is in fee status;

(c) The applicant offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value;

(d) There is a specific law which grants to the applicant the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all such interests; or

(e) The owner or owners of more than fifty percent of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the applicant.

§ 151.7 Is Tribal consent required for nonmember acquisitions?

An individual Indian or Tribe may acquire land in trust status on an Indian reservation other than its own only when the governing body of the Tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or the Tribe already owns an undivided trust or restricted interest in the parcel of land to be acquired.

§ 151.8 What documentation is included in a trust acquisition package?

An individual Indian or Tribe seeking to acquire land in trust status must

Bureau of Indian Affairs, Interior**§ 151.8**

file a written request, *i.e.*, application, with the Secretary. The request need not be in any special form but must set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition fulfills the requirements of this part. The Secretary will prepare the acquisition package using information provided by the applicant and analysis developed by the Secretary, as described in paragraphs (a)(1) through (9) of this section:

(a) A complete acquisition package consists of the following:

(1) The applicant must submit a request that the land be acquired in trust, as follows:

(i) If the applicant is an Indian Tribe, the Tribe's written request must be a signed Tribal letter for trust acquisition supported by a Tribal resolution or other act of the governing body of the Tribe;

(ii) If the applicant is an individual Indian, the individual's written request must be a signed letter requesting trust status;

(2) The applicant must submit documentation providing the information evaluated by the Secretary under § 151.9(a)(2) and (3), § 151.10(a)(2) and (3), § 151.11(a)(2) and (3), or § 151.12(a)(2) and (3) depending on which section applies to the application;

(3) The applicant must submit a statement identifying the existence of statutory authority for the acquisition including, if applicable, any supporting evidence that the Tribe was under Federal jurisdiction in 1934 pursuant to § 151.4.

(4) The applicant must submit a description of the land as follows:

(i) An aliquot part, government lot, parcel identified on a Government Land Office or Bureau of Land Management official survey plat, or lot block subdivision (LBS) legal description of the land and a map from the applicant, including a statement of the estate to be acquired, *e.g.*, all surface and mineral rights, surface rights only, surface rights and a portion of the mineral rights, etc.; or

(ii) A metes and bounds land description and survey if the land cannot be described by the methods listed in paragraph (a)(4)(i) of this section, in-

cluding a statement of the estate to be acquired. The survey may be completed by a land surveyor registered in the jurisdiction in which the land is located when the land being acquired is fee simple land; and

(iii) An application package is not complete until the Secretary determines that the legal description or survey is sufficient.

(5) The applicant must submit information that allows the Secretary to comply with the National Environmental Policy Act (NEPA) and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations pursuant to § 151.15; and

(i) An acquisition package is not complete until the public review period of a final environmental impact statement or, where appropriate, the final environmental assessment has concluded, or the categorical exclusion documentation is complete.

(ii) An acquisition package is not complete until a pre-acquisition Phase I environmental site assessment, and if necessary, a Phase II environmental site assessment completed pursuant to 602 DM 2 is determined to be sufficient by the Secretary.

(6) The applicant must submit title evidence pursuant to § 151.14.

(i) An acquisition package is not complete until the Secretary completes a Preliminary Title Opinion based on such evidence;

(ii) [Reserved]

(7) The Secretary shall send notification letters pursuant to § 151.9, § 151.10, § 151.11, or § 151.12.

(8) The applicant must submit a statement that any existing covenants, easements, or restrictions of record will not interfere with the applicant's intended use of the land; and

(9) The applicant must submit any additional information or action requested by the Secretary, in writing, if warranted by the specific application.

(b) After the Bureau of Indian Affairs is in possession of a complete acquisition package, the Secretary shall:

(1) Notify the applicant within 30 calendar days in writing that the acquisition package is complete; and

(2) Issue a decision on a request within 120 calendar days after issuance of

§ 151.9**25 CFR Ch. I (4-1-25 Edition)**

the notice of a complete acquisition package.

§ 151.9 How will the Secretary evaluate a request involving land within the boundaries of an Indian reservation?

(a) The Secretary shall consider the criteria in this section when evaluating requests for the acquisition of land in trust status when the land is located within the boundaries of an Indian reservation.

(1) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(2) If the applicant is an individual Indian, the need for additional land, the amount of trust or restricted land already owned by or for that individual, and the degree to which the individual needs assistance in handling their affairs;

(3) The purposes for which the land will be used; and

(4) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(b) The Secretary shall give great weight to acquiring land that serves any of the following purposes, in accordance with § 151.3:

(1) Furthers Tribal interests by establishing a Tribal land base or protects Tribal homelands;

(2) Protects sacred sites or cultural resources and practices;

(3) Establishes or maintains conservation or environmental mitigation areas;

(4) Consolidates land ownership;

(5) Reduces checkerboarding;

(6) Acquires land lost through allotment;

(7) Protects treaty or subsistence rights; or

(8) Facilitates Tribal self-determination, economic development, or Indian housing.

(c) When reviewing a Tribe's request for land within the boundaries of an Indian reservation, the Secretary presumes that the acquisition will further the Tribal interests described in paragraph (b) of this section, and adverse impacts to local governments' regulatory jurisdiction, real property taxes,

and special assessments will be minimal, therefore the application should be approved.

(d) Upon receipt of a written request to have land acquired in trust within the boundaries of an Indian reservation the Secretary shall notify the State and local governments with regulatory jurisdiction over the land to be acquired of the applicant's request. The notice will inform the State or local government that each will be given 30 calendar days in which to provide written comments to rebut the presumption of minimal adverse impacts to regulatory jurisdiction, real property taxes, and special assessments. If the State or local government responds within 30 calendar days, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply, if they choose to do so in their discretion, or request that the Secretary issue a decision. In considering such comments, the Secretary presumes that the Tribal community will benefit from the acquisition.

§ 151.10 How will the Secretary evaluate a request involving land contiguous to the boundaries of an Indian reservation?

(a) The Secretary shall consider the criteria in this section when evaluating requests for the acquisition of land in trust status when the land is located contiguous to an Indian reservation:

(1) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(2) If the applicant is an individual Indian, the need for additional land, the amount of trust or restricted land already owned by or for that individual, and the degree to which the individual needs assistance in handling their affairs;

(3) The purposes for which the land will be used; and

(4) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(b) The Secretary shall give great weight to acquiring land that serves

Bureau of Indian Affairs, Interior**§ 151.11**

any of the following purposes, in accordance with § 151.3:

- (1) Furthers Tribal interests by establishing a Tribal land base or protects Tribal homelands;
- (2) Protects sacred sites or cultural resources and practices;
- (3) Establishes or maintains conservation or environmental mitigation areas;
- (4) Consolidates land ownership;
- (5) Reduces checkerboarding;
- (6) Acquires land lost through allotment;
- (7) Protects treaty or subsistence rights; or
- (8) Facilitates Tribal self-determination, economic development, or Indian housing.

(c) When reviewing a Tribe's request for land contiguous to an Indian reservation, the Secretary presumes that the acquisition will further the Tribal interests described in paragraph (b) of this section, and adverse impacts to local governments' regulatory jurisdiction, real property taxes, and special assessments will be minimal, therefore the application should be approved.

(d) Upon receipt of a written request to have land contiguous to an Indian reservation acquired in trust status, the Secretary shall notify the State and local governments with regulatory jurisdiction over the land to be acquired. The notice will inform the State or local government that each will be given 30 calendar days in which to provide written comments to rebut the presumption of minimal adverse impacts to regulatory jurisdiction, real property taxes, and special assessments. If the State or local government responds within 30 calendar days, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply, if they choose to do so in their discretion, or request that the Secretary issue a decision. In considering such comments, the Secretary presumes that the Tribal community will benefit from the acquisition.

§ 151.11 How will the Secretary evaluate a request involving land outside of and noncontiguous to the boundaries of an Indian reservation?

(a) The Secretary shall consider the criteria in this section when evaluating

requests for the acquisition of land in trust status when the land is located outside of and noncontiguous to an Indian reservation:

- (1) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (2) If the applicant is an individual Indian and the land is already held in trust or restricted status, the need for additional land, the amount of trust or restricted land already owned by or for that individual, and the degree to which the individual needs assistance in handling their affairs;
- (3) The purposes for which the land will be used; and
- (4) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(b) The Secretary shall give great weight to acquiring land that serves any of the following purposes, in accordance with § 151.3:

- (1) Furthers Tribal interests by establishing a Tribal land base or protects Tribal homelands;
- (2) Protects sacred sites or cultural resources and practices;
- (3) Establishes or maintains conservation or environmental mitigation areas;
- (4) Consolidates land ownership;
- (5) Reduces checkerboarding;
- (6) Acquires land lost through allotment;
- (7) Protects treaty or subsistence rights; or
- (8) Facilitates Tribal self-determination, economic development, or Indian housing.

(c) Upon receipt of a written request to have land outside the boundaries of an Indian reservation acquired in trust status, the Secretary shall notify the State and local governments with regulatory jurisdiction over the land to be acquired. The notice will inform the State or local government that each will be given 30 calendar days in which to provide written comments on the acquisition's potential impact on regulatory jurisdiction, real property taxes, and special assessments. If the State or local government responds within 30 calendar days, a copy of the comments

§ 151.12

will be provided to the applicant, who will be given a reasonable time in which to reply, if they choose to do so in their discretion, or request that the Secretary issue a decision. In reviewing such comments, the Secretary will consider the location of the land and potential conflicts of land use. The Secretary presumes that the Tribe will benefit from the acquisition.

§ 151.12 How will the Secretary evaluate a request involving land for an initial Indian acquisition?

(a) The Secretary shall consider the criteria in this section when evaluating requests for the acquisition of land in trust status when a Tribe does not have a reservation or land held in trust.

(1) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(2) The purposes for which the land will be used; and

(3) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(b) The Secretary shall give great weight to acquiring land that serves any of the following purposes, in accordance with § 151.3:

(1) Further Tribal interests by establishing a Tribal land base or protects Tribal homelands;

(2) Protects sacred sites or cultural resources and practices;

(3) Establishes or maintains conservation or environmental mitigation areas;

(4) Consolidates land ownership;

(5) Reduces checkerboarding;

(6) Acquires land lost through allotment;

(7) Protects treaty or subsistence rights; or

(8) Facilitates Tribal self-determination, economic development, or Indian housing.

(c) When reviewing a request for a Tribe that does not have a reservation or land held in trust, the Secretary presumes that the acquisition will further the Tribal interests described in paragraph (b) of this section, and adverse impacts to local governments' regulatory jurisdiction, real property

25 CFR Ch. I (4-1-25 Edition)

taxes, and special assessments will be minimal, therefore the application should be approved.

(d) Upon receipt of a written request for land to be acquired in trust when a Tribe does not have a reservation or land held in trust, the Secretary shall notify the State and local governments with regulatory jurisdiction over the land to be acquired. The notice will inform the State or local government that each will be given 30 calendar days in which to provide written comments to rebut the presumption of minimal adverse impacts to regulatory jurisdiction, real property taxes, and special assessments. If the State or local government responds within 30 calendar days, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply, if they choose to do so in their discretion, or request that the Secretary issue a decision. In reviewing such comments, the Secretary will consider the location of the land and potential conflicts of land use. The Secretary presumes that the Tribe will benefit from the acquisition.

§ 151.13 How will the Secretary act on requests?

(a) The Secretary shall review each request and may request any additional information or justification deemed necessary to reach a decision.

(b) The Secretary's decision to approve or deny a request shall be in writing and state the reasons for the decision.

(c) A decision made by the Office of the Secretary or the Assistant Secretary—Indian Affairs pursuant to delegated authority, is a final agency action under 5 U.S.C. 704 upon issuance.

(1) If the Office of the Secretary or Assistant Secretary denies the request, the Assistant Secretary shall promptly provide the applicant with the decision.

(2) If the Office of the Secretary or Assistant Secretary approves the request, the Assistant Secretary shall:

(i) Promptly provide the applicant with the decision;

(ii) Promptly publish notice in the FEDERAL REGISTER of the decision to acquire land in trust status under this part; and

Bureau of Indian Affairs, Interior**§ 151.14**

(iii) Immediately acquire the land in trust status under § 151.16 after the date such decision is issued and upon fulfillment of the requirements of any other Department of the Interior requirements.

(d) A decision made by a Bureau of Indian Affairs official, rather than the Office of the Secretary or Assistant Secretary, pursuant to delegated authority, is not a final agency action of the Department of the Interior under 5 U.S.C. 704 until administrative remedies are exhausted under part 2 of this chapter and under 43 CFR part 4, subpart D, or until the time for filing a notice of appeal has expired and no administrative appeal has been filed. Administrative appeals are governed by part 2 of this chapter and by 43 CFR part 4, subpart D.

(1) If the official denies the request, the official shall promptly provide the applicant with the decision and notification of the right to file an administrative appeal under part 2 of this chapter.

(2) If the official approves the request, the official shall:

(i) Promptly provide the applicant with the decision;

(ii) Promptly provide written notice, by U.S. mail or personal delivery, of the decision and the right, if any, to file an administrative appeal of such decision under part 2 of this chapter and 43 CFR part 4, subpart D to:

(A) Interested parties who have made themselves known, in writing, to the official prior to the decision being made; and

(B) The State and local governments having regulatory jurisdiction over the land to be acquired;

(iii) Promptly publish a notice in a newspaper of general circulation serving the affected area of the decision and the right, if any, of interested parties who did not make themselves known, in writing, to the official to file an administrative appeal of the decision under part 2 of this chapter; and

(iv) Immediately acquire the land in trust status under § 151.16 upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this chapter and under 43 CFR part 4, subpart D, and upon the fulfillment of any

other Department of the Interior requirements.

(3) The administrative appeal period begins on:

(i) The date of receipt of written notice by the applicant or interested parties entitled to notice under paragraphs (d)(1) and (d)(2)(ii) of this section; or

(ii) The date of first publication of the notice for unknown interested parties under paragraph (d)(2)(iii) of this section, which shall be deemed the date of receipt of the decision.

(4) Any party who wishes to seek judicial review of an official's decision must first exhaust administrative remedies under 25 CFR part 2 and under 43 CFR part 4, subpart D.

§ 151.14 How will the Secretary review title?

(a) The applicant must submit title evidence as part of a complete acquisition package as described in § 151.8 as follows:

(1) The deed or other conveyance instrument providing evidence of the applicant's title or, if the applicant does not yet have title, the deed providing evidence of the transferor's title and a written agreement or affidavit from the transferor that title will be transferred to the United States on behalf of the applicant to complete the acquisition in trust status; and

(2) Either:

(i) A current title insurance commitment issued by a title company; or

(ii) The policy of title insurance issued by a title company to the applicant or current owner and an abstract of title issued by a title company in place of an abstract of title for purposes of this paragraph (a)(2)(ii) if the applicant provides evidence that the title company will not issue an abstract of title based on practice in the local jurisdiction, subject to the requirements of paragraph (b) of this section.

(3) The applicant may choose to provide title evidence meeting the title

§ 151.15

standards issued by the U.S. Department of Justice, in lieu of the evidence required by paragraph (a)(2) of this section.

(b) After reviewing title evidence, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities that the Secretary identified and may seek additional information or action from the applicant needed to address such issues. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to acceptance of the land in trust status if the Secretary determines that the liens, encumbrances, or infirmities make title to the land unmarketable.

§ 151.15 How will the Secretary conduct a review of environmental conditions?

(a) The Secretary shall comply with the requirements of the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 *et seq.*), applicable Council on Environmental Quality regulations (40 CFR parts 1500–1508), and Department of the Interior regulations (43 CFR part 46) and guidance. The Secretary's compliance may require preparation of an environmental impact statement, an environmental assessment, a categorical exclusion, or other documentation that satisfies the requirements of NEPA.

(b) The Secretary shall comply with the terms of 602 DM 2, Land Acquisitions: Hazardous Substances Determinations, or its successor policy if replaced or renumbered, so long as such guidance remains in place and binding. If the Secretary approves a request for the acquisition of land in trust status, the Secretary may then require, before formalization of acceptance pursuant to §151.16, that the applicant provide information updating a prior pre-acquisition environmental site assessment conducted under 602 DM 2.

(1) If no recognized environmental conditions or other environmental issues of concern are identified in the pre-acquisition environmental site assessment or before formalization of acceptance and all other requirements of this section and §§151.13 and 151.14 are met, the Secretary shall acquire the land in trust.

25 CFR Ch. I (4-1-25 Edition)

(2) If recognized environmental conditions or other environmental issues of concern are identified in the pre-acquisition environmental site assessment or before formalization of acceptance, the Secretary shall notify the applicant and may seek additional information or action from the applicant to address such issues of concern. The Secretary may require the elimination of any such issues of concern prior to the formalization of acceptance.

§ 151.16 How are formalization of acceptance and trust status attained?

(a) The Secretary shall formalize acceptance of land in trust status by signing an instrument of conveyance. The Secretary shall sign the instrument of conveyance after the requirements of §§151.13, 151.14, and 151.15 have been met.

(b) The land will attain trust status when the Secretary signs the instrument of conveyance.

(c) The Secretary shall record the deed with LTRO pursuant to part 150 of this chapter.

§ 151.17 What effect does this part have on pending requests and final agency decisions already issued?

(a) Requests pending on January 11, 2024 will continue to be processed under 25 CFR part 151 (revised as of April 1, 2023) unless the applicant requests in writing to proceed under this part.

(1) Upon receipt of such a request, the Secretary shall process the pending application under this part, except for §151.8(b)(2).

(2) The Secretary shall consider the comments of State and local governments submitted under the notice provisions of 25 CFR part 151 (revised as of April 1, 2023).

(b) This part does not alter decisions of Bureau of Indian Affairs Officials under appeal on January 11, 2024 or final agency decisions made before January 11, 2024.

§ 151.18 Severability.

If any provision of this part, or any application of a provision, is stayed or determined to be invalid by a court of competent jurisdiction, the remaining provisions or applications are severable and shall continue in effect.